

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JASEN LYNN DUSHANE,

Plaintiff,

v.

NORTHERN NEVADA CORRECTIONAL  
CENTER, et al.,

Defendants.

3:14-cv-00586-RCJ-VPC

**ORDER**

**I. DISCUSSION**

Defendants have submitted a motion for clarification. (ECF No. 27). On January 19, 2016, the Court issued its screening order permitting Plaintiff's First Amendment access to the courts claim to proceed and staying this case for ninety days to allow Plaintiff and Defendants an opportunity to settle their dispute. (ECF No. 19). On February 12, 2016, the Court issued a subsequent order denying a motion for preliminary injunction and a motion for reconsideration filed by the Plaintiff. (ECF No. 22). In that order, the Court stated "the stay issued in the Court's previous order (ECF No. 19) remains in effect. The parties are directed to refer to that order for all deadlines and pertinent information concerning the further progression of this case." (ECF No. 22 at 3:8-10).

Defendants subsequently filed the instant motion, asking the Court for clarification concerning the Plaintiff's application to proceed *in forma pauperis*. (See ECF No. 27). In the screening order, the Court: (1) granted the Plaintiff's application to proceed *in forma pauperis*, (2) ordered Plaintiff to complete service of the complaint through the U.S. Marshal's Office; (3) stayed the case for ninety (90) days to allow Plaintiff and Defendants an opportunity to settle their dispute through a court-appointed mediator. (ECF No. 19 at 5:6-7, 5:9-6:14).

The Court hereby grants the motion for clarification. The Court now vacates the portion of the screening order which granted Plaintiff's application to proceed *in forma pauperis* and the portion that directed Plaintiff to complete service through the U.S. Marshal's office. The Court is not denying Plaintiff's application to proceed *in forma pauperis*, but rather is deferring it to allow the parties to attempt to settle their disputes before the \$350.00 filing fee is paid, an answer is filed, or the discovery process begins. The Court will order e-service on the defendants when it is time to do so.

## II. CONCLUSION

For the foregoing reasons, IT IS ORDERED that defendants' motion for clarification of screening order (ECF No. 27) is GRANTED to the extent described above.

IT IS FURTHER ORDERED that the portion of the Court's screening order directing Plaintiff to complete service through the U.S. Marshal's Office and granting his application for leave to file *in forma pauperis* (ECF No. 19 at 5:6-7, 5:9-6:14) is vacated.

IT IS FURTHER ORDERED that Plaintiff's application for leave to file *in forma pauperis* (ECF No. 1) is deferred.

IT IS FURTHER ORDERED that Defendant the Nevada Department of Corrections is dismissed with prejudice, as amendment would be futile.<sup>1</sup>

IT IS FURTHER ORDERED that the Court clarifies that Plaintiff's First Amendment access to the courts claim states a claim against Defendants Warden Isidro Baca, Associate Warden Walsh, Associate Warden Schreckengost, Correctional Officer Moses, Correctional Officer Foster, and Law Library Supervisor Pauline Simmons.

IT IS FURTHER ORDERED that, consistent with the findings of this order, the Court

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<sup>1</sup> The NDOC is an arm of the State of Nevada and is not a "person" for purposes of 42 U.S.C. § 1983. See *Doe v. Lawrence Livermore Nat. Lab.*, 131 F.3d 836, 839 (9th Cir. 1997); *Black v. Nevada Dep't of Corr.*, 2:09-cv-2343-PMP-LRL, 2010 WL 2545760, \*2 (D. Nev. June 21, 2010). As such, the Court dismisses with prejudice all claims against the NDOC, as amendment would be futile.

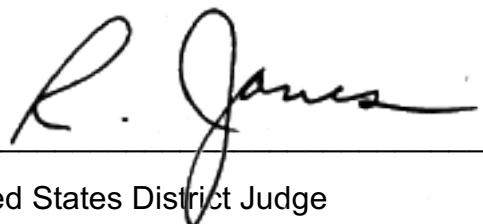
1 HEREBY STRIKES lines 6-7 and 9-24 on page 5 and lines 1-14 on page 6 of its screening  
2 order (ECF No. 19).

3 IT IS FURTHER ORDERED that the Court extends the stay currently in effect until June  
4 10, 2016, to allow Plaintiff and Defendants an opportunity to settle their disputes before the  
5 \$350.00 filing fee is paid, an answer is filed, or the discovery process begins. The Court has  
6 referred this case to the Court's Inmate Early Mediation Program and an inmate early  
7 mediation conference is currently scheduled for May 31, 2016 at 1:30 PM in Reno Courtroom  
8 1 before mediator Don Christensen. The mediation shall take place as scheduled. On or  
9 before June 10, 2016, the Office of the Attorney General shall file the report form attached to  
10 this order regarding the results of the stay, even if a stipulation for dismissal is entered prior  
11 to the end of the stay. If the parties proceed with this action, the Court will then issue an order  
12 setting a date for Defendants to file an answer or other response. Following the filing of an  
13 answer, the Court will issue a scheduling order setting discovery and dispositive motion  
14 deadlines.

15 IT IS FURTHER ORDERED that "settlement" may or may not include a payment of  
16 money damages. It also may or may not include an agreement to resolve Plaintiff's issues  
17 differently. A compromise agreement is one in which neither party is completely satisfied with  
18 the result, but both have given something up and both have obtained something in return.

19 IT IS FURTHER ORDERED that if the case does not settle, Plaintiff will be required to  
20 pay the full \$350.00 filing fee. This fee cannot be waived. If Plaintiff is allowed to proceed *in*  
21 *forma pauperis*, the fee will be paid in installments from his prison trust account. 28 U.S.C.  
22 § 1915(b). If Plaintiff is not allowed to proceed *in forma pauperis*, the \$350.00 will be due  
23 immediately.

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25 DATED: This 7<sup>th</sup> day of June, 2016.

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United States District Judge

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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 JASEN LYNN DUSHANE, )

10 Plaintiff, )

3:14-cv-00586-RCJ-VPC

11 )  
12 v. )

REPORT OF ATTORNEY GENERAL  
RE: RESULTS OF 90-DAY STAY

13 NORTHERN NEVADA CORRECTIONAL )

14 CENTER, et al., )

15 Defendants. )  
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18 **NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM.**

19 **THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**  
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21 On January 25, 2016, the Court issued its screening order stating that it had  
22 conducted its screening pursuant to 28 U.S.C. § 1915A, and that Plaintiff's First  
23 Amendment access to the courts claim would proceed. The Court ordered the Office of the  
24 Attorney General of the State of Nevada to file a report ninety (90) days after the date of  
25 the entry of the Court's screening order to indicate the status of the case at the end of the  
26 90-day stay. In a subsequent order, the Court ordered the office of the Attorney General of  
27 the State of Nevada to file its report on or before June 10, 2016. By filing this form, the  
28 Office of the Attorney General hereby complies.

**REPORT FORM**

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

**Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay.** [If this statement is accurate, check ONE of the six statements below and fill in any additional information as required, then proceed to the signature block.]

\_\_\_\_\_ A mediation session with a court-appointed mediator was held on \_\_\_\_\_ [enter date], and as of this date, the parties have reached a settlement *(even if paperwork to memorialize the settlement remains to be completed)*. *(If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)*

\_\_\_\_\_ A mediation session with a court-appointed mediator was held on \_\_\_\_\_ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. *(If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)*

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for \_\_\_\_\_ [enter date].

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.

\_\_\_\_\_ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

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**Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations.** [If this statement is accurate, check ONE of the four statements below and fill in any additional information as required, then proceed to the signature block.]

\_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement *(even if the paperwork to memorialize the settlement remains to be completed)*. *(If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of*

1 *dismissal.)*

2 \_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the  
3 parties have not reached a settlement. The Office of the Attorney General  
therefore informs the Court of its intent to proceed with this action.

4 \_\_\_\_\_ The parties have not engaged in settlement discussions and as of this date,  
5 the parties have not reached a settlement. The Office of the Attorney  
General therefore informs the Court of its intent to proceed with this action.

6 \_\_\_\_\_ None of the above three statements fully describes the status of this case.  
7 Contemporaneously with the filing of this report, the Office of the Attorney  
General of the State of Nevada is filing a separate document detailing the  
8 status of this case.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:

9 Attorney Name: \_\_\_\_\_  
10 \_\_\_\_\_ Print \_\_\_\_\_ Signature

11 Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
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